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Identical letters dated 22 January 2001 from the Chargé d'affaires a.i. of the Permanent Mission of Iraq to the United Nations addressed to the Secretary-General and to the President of the Security Council

On instructions from my Government, I have the honour to transmit to you herewith a study, in the light of Security Council resolution 1314 (2000), of the impact of the embargo and the ongoing aggression on the children of Iraq.

I should be grateful if you would have this letter and its annex circulated as a document of the Security Council.

(*Signed*) Mohammed **Al-Humaimidi**
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Annex to the identical letters dated 22 January 2001 from the Chargé d'affaires a.i. of the Permanent Mission of Iraq to the United Nations addressed to the Secretary-General and to the President of the Security Council

Study presented by the Government of Iraq to the Secretary-General and to the President of the Security Council in the light of Security Council resolution 1314 (2000), January 2001

In paragraph 1 of its resolution 1314 (2000) of 11 August 2000, the Security Council:

> "*Reaffirms* its strong condemnation of the deliberate targeting of children in situations of armed conflict and the harmful and widespread impact of armed conflict on children, and the long-term consequences this has for durable peace, security and development."

In paragraph 9 of the resolution, the Council:

> "*Notes* that the deliberate targeting of civilian populations or other protected persons, including children, and the committing of systematic, flagrant and widespread violations of international humanitarian and human rights law, including that relating to children, in situations of armed conflict may constitute a threat to international peace and security, and in this regard *reaffirms* its readiness to consider such situations and, where necessary, to adopt appropriate steps."

Pursuant to paragraph 20 of the same resolution, the Government of Iraq is presenting this study in order to highlight the consequences for the children of Iraq of the savage aggression launched against the country by the coalition partners under the leadership of the United States of America and then of the embargo that has been maintained against it for more than 10 years in violation of international humanitarian law and human rights law.

For 10 years the children of Iraq have been facing a systematic and wilful abomination that first took the form of the devastating war conducted by the United States of America that inflicted on them the horrors of violence and deprivation. The children of Iraq have thus witnessed the most repulsive crimes committed against themselves and their families, friends and neighbours. The social fabric of the Iraqi family and of the community has been torn apart, and children have been deprived of their right to life, health and education.

On 17 January 1991, the coalition countries under the leadership of the United States of America launched an armed military assault that continued for the 42 days of an unprecedented bombing campaign. All types of sophisticated weapons were used, and some 109,000 raids were launched against Iraq in which more than 88,500,000 tons of explosives were used. They were primarily directed against civilian life in all parts of Iraq and had the purpose of destroying the economy and the morale of the Iraqi people and returning the country to a pre-industrial state. When the war ended in March 1991, the Iraqi people faced a terrifying crisis of survival because of the destruction of electric power stations, water purification plants, food-processing factories, food warehouses, waste-water treatment plants, oil wells, hospitals and other targets.

Despite Iraq's compliance with its obligations under the Security Council resolutions relating to its disarmament, the economic embargo that has been maintained against it since 1990 has had devastating consequences that have affected all aspects of life and have delayed the resumption of progress and cultural advancement in all fields. We can say that the Iraqi people is today confronted with destruction and genocide by means of a weapon that is no less dangerous than weapons of mass destruction, namely the economic embargo.

There follow hereunder a review of the violations of the rights of children resulting from the military aggression and the economic embargo and an examination of the perspective of international law in that regard.

The military aggression against Iraq in the light of international law

In paragraph 3 of its resolution 1314 (2000), the Security Council:

> "*Urges* all parties to armed conflict to respect fully international law applicable to the rights and protection of children in armed conflict, in particular the Geneva Conventions of 1949 and the obligations applicable to them under the Additional Protocols thereto of 1977, the United Nations Convention on the Rights of the Child of 1989 ..."

The laws and customs of war require belligerent States to restrict their military operations to purely military objectives and to avoid attacking civilian localities. Article 23 (c) of the [regulations annexed to the] Hague Convention IV of 1907 provides that:

> "[sic] To attack and destroy civilian localities is prohibited ..." [sic].

Article 25 of the [regulations annexed to] the same Convention states that:

> "The attack or bombardment, by whatever means, of towns, villages, dwellings, or buildings which are civilian [i.e. undefended] is prohibited."

Article 26 of the [regulations annexed to] the Convention states that:

> "[sic] It is prohibited for belligerent forces to attack undefended civilian localities." [sic]

The Geneva Conventions of 1949 adopted the same principle, and article 13 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, the fourth Geneva Convention of 12 August 1949, states that:

> "The provisions of the Convention [i.e. Part II] cover the whole of the populations of the countries in conflict, without any adverse distinction based, in particular, on race, nationality, religion or political opinion, and are intended to alleviate the sufferings caused by war."

Article 57 of the 1977 Additional Protocol I to the Geneva Conventions, imposing precautionary measures, includes the following:

> "[1. In the conduct of military operations,] constant care shall be taken to spare the civilian population, civilians and civilian objects.
>
> "[2. With respect to attacks, the following precautions shall be taken:]

"[(a) those who plan or decide upon an attack shall:]

"[...]

"[(iii)] refrain from deciding to launch any attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated;

"...

"[4.] In the conduct of military operations at sea or in the air, each Party to the conflict shall, in conformity with its rights and duties under the rules of international law applicable in armed conflict, take all reasonable precautions to avoid losses of civilian lives and damage to civilian objects.

"5. No provision of this Article may be construed as authorizing any attacks against the civilian population, civilians or civilian objects."

Article 48 of the Protocol establishes the basic rule that:

"In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall ... distinguish between the civilian population and combatants ... and accordingly shall direct their operations only against military objectives."

Article 51 of the 1977 Additional Protocol I states that:

"...

"[2.] The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited."

"..."

The countries that launched the aggression against Iraq directed their military attacks against civilian objectives in cities and population centres in all parts of Iraq from the very outset. Some 10,773 persons — men, women and children — fell victim to these attacks, and 15,413 dwellings were destroyed as well as thousands of civilian installations.

Article 18 of the fourth Geneva Convention of 1949 states that:

"Civilian hospitals organized to give care to the wounded and sick, the infirm and maternity cases, may in no circumstances be the object of attack, ..."

The air raids and missile attacks nevertheless totally destroyed many hospitals and civilian health centres — that is to say 88 hospitals, 45 health centres, 8 residential health facilities and 56 health institutions — and damaged 473 primary health-care centres.

In flagrant violation of the provisions of articles 61, 62 and 65 of the 1977 Additional Protocol I, which prohibit the targeting of buildings used for civil defence purposes and shelters intended for the civilian population, the United States of America and its coalition partners committed a loathsome crime that history will long remember. This was the bombing of the Amiriyah shelter in an attack that was

contrived and planned in advance. Preparations were made by introducing guided missiles specially designed to penetrate reinforced concrete. The shelter was destroyed together with the 403 people inside, including 52 infants and 260 women as well as children and men. The aggressor countries spared no effort to bomb and destroy schools, kindergartens and education services, and 676 day-care and educational institutions were attacked, including 28 schools that were completely destroyed.

The acts of aggression did not cease with the proclamation of the ceasefire in 1991 but have continued up to the present time. The people of Iraq, including its children and women, are thus still being subjected to daily bombardments by United States and British aircraft. The number of sorties flown by such aircraft as of 31 October 2000 was 26,436, and in them they bombed civilian population centres and killed 315 people and wounded 965, all of them civilians.

The suffering of the children of Iraq owing to the ongoing United States and British aggression reflects a moral void and a moral collapse vis-à-vis the fundamental norms of international humanitarian law, and this requires immediate action to end the suffering.

The economic embargo

In paragraph 15 of its resolution 1314 (2000), the Security Council indicates its willingness to consider assessing the potential unintended consequences of sanctions on children. The Government of Iraq would like in this regard to highlight the consequences the embargo has had for the civilian population and particularly for vulnerable groups such as women and children.

Impact of the economic embargo on civilians

The economic embargo imposed on Iraq has caused a humanitarian catastrophe comparable to the worst there have been in recent decades. Estimates of the number of fatalities caused vary between 500,000 and 1.5 million, most of them children. It must be emphasized that a large part of the ongoing controversy concerning the number of fatalities only obscures the fact that any fatality caused by the sanctions regime would indicate the presence of grave violations of humanitarian law and is unacceptable.

After conducting its first statistical studies of mother and child mortality in Iraq in 1991, UNICEF concluded in 1999 that children under the age of five from overpopulated areas of the country were dying at more than double the rate that had prevailed 10 years before. One expert on the impact of the sanctions on civilians states that the underlying reasons for the excessive number of fatalities include contaminated water, the lack of high-quality food, inadequate breastfeeding, bad weaning practices and the shortage of supplies in the therapeutic health-care system. The food shortage caused by the sanctions has led to a 32 per cent drop in per capita caloric intake in comparison with the period prior to the Gulf war. According to the Iraqi Government, in 1997 only one half of the country's water-treatment capacity was still in service.

Because of the shortage of medical supplies it is estimated that by the beginning of 1997 30 per cent of hospital beds could not be utilized, 75 per cent of all hospital equipment was unserviceable and 25 per cent of the 1,305 health centres in Iraq had closed. In its report (S/1999/356, annex II, para. 43), the second panel established pursuant to the note by the President of the Security Council of 30 January 1999 (S/1999/100), concerning the current humanitarian situation in Iraq, concluded that:

> "... In marked contrast to the prevailing situation prior to the events of 1990-1991, the infant mortality rates in Iraq today are among the highest in the world, low infant birth weight affects at least 23 per cent of all births, chronic malnutrition affects every fourth child under five years of age, only 41 per cent of the population have regular access to clean water, 83 per cent of all schools need substantial repairs. The ICRC states that the Iraqi health-care system is today in a decrepit state. UNDP calculates that it would take 7 billion United States dollars to rehabilitate the power sector country-wide to its 1990 capacity."

In March 2000 the Secretary-General expressed his special concern at the plight of Iraqi children.

The health crisis in Iraq has blended with the general social and economic crises caused by the sanctions. Even if fatalities were to decrease as a result of the humanitarian exemptions (which the Secretary-General and others view as impossible), there would still be gross and systematic violations of the rights of Iraqi citizens that are attributable to the sanctions. The economic, social and cultural rights of the Iraqi people are overlooked, as are its right to development and its right to education. By way of example, the purchasing power of the average Iraqi's income in the mid-1990s was about 5 per cent of that prior to 1990 and "the country has experienced a shift from relative affluence to massive poverty", as stated by the UNDP field office (S/1999/356, annex II, para. 43). The progress previously made in education and literacy has been completely reversed over the past 10 years. After his resignation in September 1998, Denis J. Halliday, a former Assistant Secretary-General of the United Nations and Coordinator of the Humanitarian Programme in Iraq, stated that the sanctions had had an alarming impact on the extended family system in Iraq; that there had been an increase in the number of one-parent families; that mothers customarily struggled on alone; that cases of divorce had increased; that many families had been forced to sell their houses, furniture and other belongings in order to buy food, so that homes had been destroyed; and that many young people were resorting to prostitution. Crime rates have also risen, and there has been a sharp increase in emigration. Researchers have also demonstrated how the adverse medical and social impact of the sanctions has been more serious for women because they are the principal casualties of social and economic displacement and disturbance.

Reactions to the sanctions

Vehement protest against the sanctions imposed on Iraq has come from all quarters. Within the United Nations, the Secretary-General himself has been in the forefront of the critics, and he made serious charges against the sanctions regime in his report to the Security Council of 10 March 2000 (S/2000/208). Two weeks later,

he stated that the Council must seek an opportunity to mitigate the suffering of the people, which was not, after all, the intended target of the sanctions. These sanctions had led to the resignation of three United Nations officials, two of them in that year alone. First, Denis J. Halliday, a former Assistant Secretary-General of the United Nations and Coordinator of the Humanitarian Programme in Iraq, resigned in September 1998 declaring that they were on the way to destroying an entire society, that the situation was quite simply horrifying and was illegal and immoral. Hans von Sponeck, Halliday's successor as Humanitarian Coordinator in Iraq, resigned on 13 February 2000, explaining that he could no longer associate himself with a programme that was prolonging the people's suffering and was incapable of meeting even the most basic needs of civilians. Two days later, Jutta Burghardt, Director of the World Food Programme in Iraq, also resigned, saying that she fully supported the statement of Mr. von Sponeck.

In the Security Council, which is the organ that is supposed to have endowed the sanctions regime with a character of legality, as well as in other forums, a number of countries, including, Brazil, China, Egypt, the Republic of Korea, Kenya, France, the Russian Federation and Slovenia, have expressed concern at the impact of the sanctions.

The sanctions have also aroused vehement protest on the part of civil society. Ending the sanctions has become a focus of attention for non-governmental organizations, human rights groups and humanitarian organizations in all parts of the world, and demonstrations, exhibitions, advocacy campaigns and conferences have been dedicated to the issue. Civil society groups have come into being with the sole objective of ending the sanctions, and they have endeavoured to bring together academics, activists and political leaders seeking the same goal. The human rights treaty bodies have published criticisms of the sanctions regime, of the damage it has done and of the violations it has caused of the human rights of Iraqis as set forth in the relevant covenants and other international instruments. The Committee on the Elimination of Racial Discrimination, the Human Rights Committee, the Commission on Human Rights, the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women have issued many statements condemning the sanctions. Many groups have defied the embargo and have provided humanitarian assistance to Iraq in the context of international civil disobedience campaigns. From the legal point of view, such popular protest clearly reflects "the requirements of public conscience".

The embargo imposed on Iraq and international law

A. Economic sanctions and the Charter of the United Nations: permissibility and restrictions

Article 39 of the Charter of the United Nations allows the Security Council to take measures such as sanctions only "to maintain or restore international peace and security" after having determined "the existence of any threat to the peace, breach of the peace, or act of aggression". Sanctions can therefore only be imposed on a government, quasi-government or other entity that can represent a danger to peace or international security or that actually threatens international peace and security. Armed groups within a country can represent a danger to international peace and

security, but it is improbable that its civilian inhabitants, who are usually unarmed, should represent such a danger. Third countries that do not represent a danger to peace and security and do not actually violate them must not be harmed by the sanctions imposed on a country that has violated them.

Moreover, the "threat" may not be deemed to be in existence for obscure political reasons. There must be genuine international concern behind the sanctions and not merely considerations relating to the foreign or domestic policy of an individual State or group of States.

Sanctions may not be imposed in order to achieve any of the other purposes and principles of the United Nations set forth in Article 1 of the Charter unless the existence of a threat to the peace, a breach of the peace or an act of aggression can be reliably demonstrated.

Above and beyond these limits, the Charter contains other provisions in each of its parts that place restrictions on sanctions.

1. The restrictions set forth in Article 24

It is stated in Article 24, paragraph 2, that "the Security Council shall act in accordance with the purposes and principles of the United Nations". All of the actions of the Security Council without exception are therefore to be scrutinized in order to determine whether or not they are in keeping with the purposes and principles of the United Nations.

2. The restrictions set forth in Article 1

Article 1, paragraph 1, requires that sanctions or other measures taken to maintain international peace and security should be "effective" and that they should be "in conformity with the principles of justice and international law". Sanctions must thus be assessed in order to ascertain that they are not unjust and do not in any way violate the principles of international law derived from sources outside the Charter. Similarly, sanctions must constantly be reviewed in order to determine whether or not they are still effective for the maintenance of peace and security. Sanctions that are lacking in effectiveness, that are unjust or that violate other norms of international law must not be imposed and if they have been imposed they must be lifted.

Article 1, paragraph 2, requires that any sanctions or other measures taken should respect "the principle of equal rights and self-determination of peoples". Sanctions may not be imposed that cause international disputes, are incompatible with international legal rights or do serious harm to a people's right to self-determination. Should such sanctions have been imposed they must be lifted.

The goal of the United Nations of "promoting and encouraging respect for human rights", set forth in Article 1, paragraph 3, necessarily places limits on sanctions. Article 1, paragraph 3, also states that the Organization has the goal of solving problems of a humanitarian character, not that of causing them. Sanctions must therefore not cause excessive hardships for a country's population. Sanctions that cause fatalities, directly or indirectly, violate the right to life. It is possible that other human rights are also violated by sanctions regimes, such as the right of the individual to security of person, to health, to education or to work.

Article 1, paragraph 4, requires that sanctions or other measures taken should promote the harmonization of national or international actions. Sanctions imposed on one country and not on another that has committed the same unlawful acts violate this stipulation requiring harmonization, as does the unequal status of two countries with respect to the imposition or non-imposition of sanctions for the same unlawful acts.

3. The restrictions set forth in Article 55

Article 55 of the Charter reinforces the restrictions set forth in Article 1, paragraph 3, and it requires the United Nations to promote: (a) higher standards of living and economic and social progress; (b) solutions of international economic, social, health and related problems; and (c) respect for and observance of human rights.

Sanctions regimes that bring about lower economic standards, cause health problems or impede the observance of human rights are regimes that violate Article 55.

B. General Assembly resolutions relating to sanctions

The General Assembly has adopted a number of resolutions that expand on the subject matter of Article 1 of the Charter and they must also be taken into account as they relate to sanctions. They include the following:

1. Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations;
2. Charter of Economic Rights and Duties of States;
3. [Declaration on] Permanent Sovereignty over Natural Resources;
4. Universal Declaration on the Eradication of Hunger and Malnutrition.

C. The restrictions imposed on sanctions by human rights law

1. Universal Declaration of Human Rights

Account must be taken of the Universal Declaration of Human Rights in its entirety, although some of its provisions are of particular importance: the right to life (article 3); the right not to be subjected to inhuman or degrading treatment (article 5); and the right to an adequate standard of living, including food, clothing, housing and medical care (article 25). All of these are rights that are particularly subject to violation under sanctions regimes. Article 25 also establishes two other rights that are subject to violation, namely the right of the individual to social security if he should lose his livelihood in circumstances beyond his control and the right of mothers and children to special care. The rights of prisoners and other detainees and those in involuntary custody are also particularly liable to violation.

2. The International Covenants on Human Rights

The two International Covenants on Human Rights reaffirm the rights set forth in the Universal Declaration of Human Rights. The International Covenant on Economic, Social and Cultural Rights, for example, recognizes the right to an adequate standard of living (article 11), the right to health (article 12) and the right to education (article 13). Article 6 of the International Covenant on Civil and Political Rights protects the right to life, and article 4 [i.e. 5] of the same Covenant contains an additional concept, namely the impermissibility of restricting or derogating from fundamental rights.

3. Other human rights instruments relevant to sanctions

1. Convention on the Rights of the Child.

2. Declaration of the Principles of International Cultural Cooperation.

It is obvious that the sanctions regime imposed on Iraq is unlawful under existing international humanitarian law and human rights law. It is totally incompatible with the aforementioned provisions of the Charter of the United Nations, the General Assembly resolutions relating to sanctions and the human rights covenants and other instruments. Some go so far as to regard it as a form of genocide. Article II of the Convention on the Prevention and Punishment of the Crime of Genocide, which entered into force on 12 January 1951, defines genocide as:

"(a) Killing members of the group;

"(b) Causing serious bodily or mental harm to members of the group;

"(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

"..."

The sanctions regime imposed on Iraq has a clear objective, namely to inflict on the Iraqi people conditions of life (insufficient food, medicines, etc.) that are calculated to bring about its physical destruction in whole or in part. It is of no importance that the apparent objective of this deliberate physical destruction concerns the security of the region. As long as there is clear evidence that thousands of civilians are dying because of the sanctions and that hundreds of thousands will die in the future because the Security Council continues to keep the sanctions in place, fatalities can no longer be regarded as an unintended collateral effect and the Security Council is responsible for all the known consequences of its actions.

The bodies that impose the sanctions cannot be absolved of the intention to destroy the Iraqi people. The former Permanent Representative of the United States to the United Nations acknowledged this when she was interviewed for the television programme "60 Minutes" by Lesley Stahl. When she was asked whether this matter "deserved" half a million deaths, she replied that they believed that it did. It is indeed possible for the States that are maintaining the sanctions to raise questions under the terms of the genocide convention.

The ongoing aerial bombardments being carried out by United States and British aircraft make this a situation of armed conflict. The meticulous measures for which provision is made in international humanitarian law in order to protect

civilians are therefore applicable to the sanctions regime and to its instigators, and those who break these laws can be prosecuted on the grounds that such violations are war crimes. In this context, reference should be made to the restrictions imposed on sanctions by humanitarian law and in particular by the Geneva Conventions of 1949. The Geneva Conventions contain provisions that are highly relevant to the matter, namely: the provisions that permit exemptions from embargo for medical supplies and goods that are essential to the survival of the civilian population; the provisions of article 54, paragraph 1, of Additional Protocol I, which states that "Starvation of civilians as a method of warfare is prohibited"; and the provisions relating to the protection of women and children, the two groups most harmed by the sanctions regime. Finally, by virtue of the Martens Clause humanitarian law clearly requires that in cases where the law has not been established consideration of "the requirements of public conscience" remains binding. As stated above, the vehement popular protest against these sanctions represents the requirements of public conscience and renders the sanctions unlawful.

In paragraph 2 of its resolution 1314 (2000), the Security Council:

> "*Emphasizes* the responsibility of all States to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity and war crimes ...."

In this connection, the Government of Iraq calls for the prosecution of those responsible for the aforesaid crimes that are being committed against the Iraqi people, and particularly children and women, and that constitute in aggregate a flagrant violation of international humanitarian law and human rights law. It further calls for the children of Iraq to be compensated for the direct and indirect damage done to them by the maintenance of the embargo and the ongoing aggression.